

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

)
C.S. by her Next Friend, ADAM STROUB,) Case No.: 4:22-cv-10993-TGB-EAS
)
Plaintiff,) HON. TERRENCE G. BERG
v)
)
CRAIG MCCRUMB, Individually and in his)
official capacity as Superintendent of Durand)
Area Schools and AMY LEFFEL,)
Individually and in her official capacity as)
Principal of Robert Kerr Elementary School)
And MICHAEL PAPANEK Individually)
and in his official capacity as On Track)
Coach of Robert Kerr Elementary School,)
)
Defendants.)
)

PARTIES' JOINT DISCOVERY PLAN

NOW COME the above-named parties, by and through their respective attorneys and for their Joint Discovery Plan in accordance with this Honorable Court's Order (ECF No. 10) and Fed. R. Civ. P. 26(f), submit the following:

1. RELATED CASES:

There are none.

2. JURISDICTION:

Plaintiff has filed this action under 42 U.S.C. 1983 alleging violations of the First and Fourteenth Amendments of the United States Constitution. Pursuant to 28 U.S.C. § 1331, this Court has jurisdiction to adjudicate Plaintiffs' claims based on Federal Question and original jurisdiction under 28 U.S.C. § 1333 to adjudicate any civil action to recover damages or secure equitable or other relief for the protection of civil rights.

3. FACTUAL SUMMARY:

This case arises from an incident occurring on February 17, 2022, in which the minor Plaintiff was, and currently remains, a student attending Robert Kerr Elementary School, a public school within the Durand Area School District. Mr. Craig McCrumb is the Superintendent of Durand Area Schools; Ms. Amy Leffel is the Principal of Robert Kerr Elementary School; and Mr. Mike Papanek is the On Track Coach at Robert Kerr Elementary School.

On the subject date, the minor Plaintiff and other students were invited to wear hats during the school day for an event called “Hat Day.” The minor Plaintiff wore a black, baseball-style hat that depicts the images of a star and an AR-15 style rifle along with the words “COME AND TAKE IT” in white font / writing (“the Hat”). The minor Plaintiff was asked by the School to remove the Hat and place it in her locker, and her parents were contacted to request that another hat be provided for her to wear. The parents declined to bring another hat, but the minor Plaintiff complied with the School’s request and placed the Hat in her locker.

Based upon the foregoing events, the minor Plaintiff alleges that the School, through the named Defendants, violated her Constitutional Rights under the First and Fourteenth Amendments to the United States Constitution. The Defendants deny any violations of the Plaintiff’s Constitutional rights and affirmatively aver that the dress code policy on its face and, as enforced, was neutrally applied in the least restrictive means possible.

4. LEGAL ISSUES:

Defendants’ statement:

- a. Whether the minor Plaintiff’s wearing of “the Hat” is speech protected by the First Amendment?
- b. Whether the School’s dress code policy is content neutral and neutrally applied in furtherance of a safe and appropriate educational environment?

- c. Whether the minor Plaintiff's wearing of "the Hat" is a fundamental right protected by the Fourteenth Amendment?
- d. Whether the minor Plaintiff had adequate notice and the opportunity to respond to the School's dress code policy?
- e. Whether the School is clothed with the authority to censor speech in the School setting to prohibit offensive speech that materially interferes with school work or discipline?
- f. Whether the Defendants are entitled to Qualified Immunity?

Plaintiff's statement:

- a. Whether Defendants violated the First Amendment rights (as applied to Defendants via the 14th Amendment) of the minor Plaintiff.

MISCELLANEOUS LEGAL ISSUES TO BE RESOLVED:

None anticipated at this time.

5. AMENDMENT OF PLEADINGS:

No amendments to the pleadings are presently anticipated, but the parties may amend their pleadings without further leave of the Court by July 31, 2022.

6. DISCOVERY:

The parties believe that Fact Discovery proceedings can be completed by December 22, 2022, and Dispositive Motions under F.R.C.P. 56 could be filed by February, 2023. In the event that the case does not resolve by way of Dispositive

Motion, Expert Discovery will proceed thereafter, and a Trial date to be determined following Expert Discovery.

DISPOSITIVE MOTIONS

The parties agree that the inclusion of expert testimony or opinions in support of a Dispositive Motion will be prohibited unless the identity of the expert, subject matter of his or her opinion, either by report or in accordance of F.R.C.P 26(a)(2)(B) is provided to the opposing party during Fact Discovery, and the opportunity to take the expert's deposition is provided.

With regard to disclosures contemplated by Fed. R. Civ. P. 26, the parties state as follows:

- a. Initial disclosures will be made by July 22, 2022, in accordance with Fed. R. Civ. P. 26(a)(5).
- b. The Plaintiff expects to be able to furnish the names of any additional lay witnesses by August 30, 2022.
- c. Defendants expect to be able to furnish the names of any additional lay witnesses by September 30, 2022.
- d. The Plaintiff expects to be able to furnish the names of any expert witnesses, except for experts solely to rebut Defendant experts, by September 30, 2022.

- e. Defendant expects that it will be able to identify all expert witnesses by October 30, 2022.
- f. Plaintiff expects to be able to identify all rebuttal expert witnesses by November 30, 2022.
- g. Pursuant to Fed. R. Civ. P. 26(a)(2), all expert witness reports will be exchanged as soon as they are received or by further agreement of the parties following any decision by the Court regarding Dispositive Motions.

The parties agree on the following discovery plan:

- a. No unusual discovery issues are contemplated.
- b. The parties agrees that the ten (10) deposition limit should be adequate.
- c. The parties does not anticipate any unusual issues regarding electronically stored evidence.

7. **ELECTRONIC DISCOVERY:** The parties do not anticipate any issues regarding electronic discovery.

8. **SETTLEMENT:**

Settlement prospects are unknown at this time. However, the parties do not object to Case Evaluation pursuant to LR 16.3, or other alternative dispute resolution if ordered by the Court.

The parties believe that they will have a better prospect of the potential for

settlement upon the completion of written discovery, depositions, and the information gathered therein.

9. **CASE EVALUATION:**

The parties do not believe that case evaluation is appropriate in this case.

10. **TRIAL:**

This case is to be tried before a Jury. The parties believe that the trial will last approximately three (3) to five (5) days. The parties would request a Trial date to be determined following the Court's decision on any dispositive motions filed in this case.

Respectfully submitted,

Dated: June 15, 2022

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing paper with the Clerk of the Court using ECF system which will send confirmation of such filing to the following:

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Respectfully submitted,

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